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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/664,279	09/17/2003	Matthias Huber	02581-P0546A	4541
24126	7590	07/22/2005	EXAMINER	
ST. ONGE STEWARD JOHNSTON & REENS, LLC 986 BEDFORD STREET STAMFORD, CT 06905-5619			FLANAGAN, BEVERLY MEINDL	
			ART UNIT	PAPER NUMBER
			3739	

DATE MAILED: 07/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/664,279

Applicant(s)

HUBER ET AL.

Examiner

Beverly M. Flanagan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.


BEVERLY M. FLANAGAN
PRIMARY EXAMINER

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Entry of Amendment

The amendment filed April 29, 2005 has been entered and made of record.

Previously Set Forth Rejections

The 35 U.S.C. § 103(a) rejection of claims 1-6, 9 and 10 as being unpatentable over Hashiguchi et al. (U.S. Patent No. 4,779,613) is hereby *maintained*. The 35 U.S.C. § 103(a) rejection of claims 7 and 8 as being unpatentable over Hashiguchi et al. (U.S. Patent No. 4,779,613) in view of Rudischhauser et al. (U.S. Patent No. 6,077,220) is hereby *maintained*.

The following reiterated grounds of rejection are set forth:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6, 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hashiguchi et al. (U.S. Patent No. 4,779,613).

In regard to claims 1-6, 9 and 10, Hashiguchi et al. disclose an endoscope 1 having a housing 3 in which an optical system 9 is inserted and a detachable eyepiece

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4 (see Figure 31). A hygroscopic member 192 is also inserted in the housing 3 (see Figures 31 and 32). Hashiguchi et al. disclose that the hygroscopic member 192 is formed from a cellulose hydrate and is sheet-shaped, but can be shaped into any size as required (see col. 16, lines 46-68). Hashiguchi et al. also disclose that other materials may be used to form the hygroscopic material, such as blotting paper or Japanese paper (see col. 17, lines 65-68 and col. 18, lines 1-6). It is the examiner's opinion that this broad disclosure incorporates the use of a moldable matrix material (which can include a cellulose hydrate), forming the hygroscopic member into an o-ring or a cylindrical sheath shape and size, utilizing elastic, silicon, ceramic or polyurethane materials and production of the hygroscopic material by injection molding. Hashiguchi et al. are silent as to the hygroscopic member 192 being removable. However, it is well settled that the separation of elements, where removability would be desirable, is a design consideration within the skill of the art. In re Dulberg, 283 F.2d 522, 129 USPQ 348 (CCPA 1961). In endoscopes, components are made removable or separable to facilitate cleaning or sterilization, or interchangeability. Accordingly, it would have been obvious for one of ordinary skill in the art at the time the invention was made to make the hygroscopic member 192 of Hashiguchi et al. removable, so that it could be easily removed for sterilization or replaced with another member when it was worn.

Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hashiguchi et al. (U.S. Patent No. 4,779,613) in view of Rudischhauser et al. (U.S. Patent No. 6,077,220).

In regard to claims 7 and 8, Hashiguchi et al. are silent as to a moisture indicator on the hygroscopic member. However, Rudischhauser et al. disclose a similar endoscope having dessicant spheres 5 inserted in the eyepiece 1 for the adsorption of moisture, where the spheres 5 are provided with a color indicator that undergoes a change at a defined moisture level (see col. 3, lines 4-32). Rudischhauser et al. thus demonstrate that moisture absorbing materials having a moisture indicator that changes color when exposed to a certain level of moisture, as used in endoscopes, are well known in the art. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the hygroscopic member 192 of Hashiguchi et al. with a moisture indicator, such as the color change indicator disclosed by Rudischhauser et al., in the interest of equipping the endoscope operator with the ability to determine when a certain level of moisture has been reached within the endoscope.

Response to Arguments

Applicant's arguments filed on April 29, 2005 have been fully considered but they are not persuasive.

Applicant argues that Hashiguchi does not disclose a hygroscopic material imbedded in a moldable matrix material where the matrix material is caulked with the

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hygroscopic substance and is inserted replaceable in the eyepiece. Applicant also argued that the hygroscopic material in Hashiguchi et al. is a flexible strip material and is not imbedded into anything. Finally, applicant argued that the sheet material is not replaceably inserted into the eyepiece.

As noted by the examiner in the previous Office action and reiterated above, Hashguchi et al. broadly disclose that the hygroscopic member 192 can be shaped into any size as required and many suitable materials may be used to form the hygroscopic material (see col. 16, lines 46-68, col. 7, lines 65-68 and col. 18, lines 1-6). This broad disclosure incorporates the use of a material where the hygroscopic material in imbedded into a matrix. As for the removably of the hygroscopic member 192, as noted above, it is well settled that the separation of elements, where removability would be desirable, is a design consideration within the skill of the art. In re Dulberg, *supra*. Accordingly, Hashiguchi et al. discloses all of the claimed features of the instant invention and claims 1-10 are therefore unpatentable over the prior art.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Beverly M. Flanagan whose telephone number is (571) 272-4766. The examiner can normally be reached on Mondays, Tuesdays and Thursdays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C.M. Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Beverly M. Flanagan
Primary Examiner
Art Unit 3739